

REMARKS

Further examination of claims 1, 2, 5-9, and 14-16 is reported in the present, final Office Action. Claims 9 and 14-16 have been allowed, while claim 2 has been objected to for depending from a rejected claim. Claims 1 and 6-8 have been rejected under 35 U.S.C. § 101 as claiming the same invention as that of re-numbered claims 1-9 of co-pending application serial no. 09/452,638, which will issue as U.S. Patent No. 6,696,281 on February 24, 2004.

As is noted in the Office Action, a statutory double patenting rejection can be overcome if the conflicting claims are amended so as not to be of co-extensive scope. Applicants respectfully submit that present claims and those of the '638 application are not of co-extensive scope and, thus, that this rejection can now be withdrawn. In particular, the claims of the '638 application are drawn to chimeric live, infectious, attenuated viruses, comprising a yellow fever virus in which the nucleotide sequences encoding the pre-membrane and envelope proteins are replaced with the nucleotide sequences encoding pre-membrane and envelope proteins of a Dengue virus.

In contrast, as is noted above, claim 1 of the present application does not specify that the flavivirus source of the pre-membrane and envelope proteins that are inserted into the yellow fever virus backbone are from a Dengue virus. None of claims 6-8, nor any of the other claims pending in this application, specifies Dengue virus inserts. Thus, because the claims of the present application and those of the '638 application are not co-extensive in scope, applicants respectfully request that the present rejection be withdrawn.

CONCLUSION

Applicants submit that the claims are in condition for allowance, and such action is respectfully requested. If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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